1941

File. No. O. Succession/41

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Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the Indian Succession Act. 1925

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Office of the Rem.Br.

There is no special law governing the heritage and patrimony problems of foreigners in India . However attention is invited to the following provisions of the Indian Su ccession Act, 1925 (XXXIX of 1925). Under section 5(1) of the Act succession to the immoveable property in British India of a person deceased shall be regulated by the law of British India, although such person may have his domicile at the time of his death outside British India . Sub-section (2) of that section lays down that succession to the moveable property of the deceased is regulated by the law of the country in which such person had his domicile at the time of his death. Under section 19 succession to moveable property in British India also is regulated by the law of British India, in the absence of proof of any domicile elsewhere. Letters of administration in the case of a deceased foreigner leaving property in British India are granted under section 219(g) according to the rules contained in that section. The law relating to the application of moveable property in payment of debts of the deceased person whose domicile was not in British India is contained in section 326. Section 36 contains the provision for transfer of assets from British India to executor or administrator in country of domicile for distribution.

2. As the subject "wills, intestacy and succession, save as regards agricultural land" has been allotted to Home Department (Proper); under entry No. 14 of the subjects allotted to that Department under the Rules of Business, the Political and Services Department is requested to show the papers to that Department before giving a reply to the Consul General for Iraq, Bombay.

Sd/-
O.C. 12/3
Remembrancer of Legal Affairs.

U.R- to the P. & S.D., No.2596 dated the 22nd March 1941.

Rala A. Office.

By the last will made by Mrs, Dyson, Mr. S.B. Lodrick has been appointed the sole executor ofthe will. Under section 211 (1) of the Indian Succession Act,1925, the executor of administrator as the case may be of a deceased person is his legal representative for all purposes, and all the property of thedeceased person vests in him as such. All the property of the deceased Mrs. Dyson therefore vestsin the executor Mrs. Lodrick. " All the property" does not mean only such properties as are stated by the will to be vested in Mr, Lodrick as executor but all the actual property of the defeased whether held by her for her own benefit or for the benefit of others (Midnapore Zamindary Co. Vs. Ram Kanai, 1925, Pat.254; 5 Pat. 80; San Gupta's Indian Succession Act, P.558). Under section 222 (1) probate can be granted only to an executr appointed by the will; and under section 273 full indemnity is given to all debtors paying their debts and all persons delivering up such property to the person to whom such probate is ranted. Consequently it appears that althoug the will made by Mrs. Dyson does not specify the annuity of Rs.7,000/-due from Government as one of the properties to be divided among her heirs, still Mr. Lodrick would, by reason of his being appointed the sole executor, be entitled to collect the annuity due from Government; but unless the probate has been obtained by Mr. Lodrick it would not be legally possible for Government to claim the benefit of the full indemnity conferred by section 273 for the payment to him of the annuity. Government should, therefore, require the production of a valid probate ofthe will before making any payment of theannuity to Mr. Lodrickas executor of the will.

Sd/-
O.C. 21/3
Remembrancer of Legal Affairs.

R. to P.& S.L. No. 3569, data 23-4-1941.